



Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia

Telephone 61 3 9288 0555
Facsimile 61 3 9288 0666

info@maddocks.com.au
www.maddocks.com.au

DX 259 Melbourne

Date 09/12/16

Kew Residential Services Development Agreement Sixth Deed of Variation

**Secretary to the Department of Economic Development, Jobs, Transport and
Resources**
and

Kew Development Corporation Pty Ltd
ACN 119 766 264
and

Walker Group Holdings Pty Ltd
ACN 001 215 069

Contents

1.	Definitions and interpretation	2
2.	Variation of Principal Agreement	2
2.1	New Definitions	2
2.2	Amended Definitions	2
2.3	Payment of Stage 2 Community Houses Payment and Heritage Building Repayment.....	3
2.4	Maintenance of Heritage Buildings	3
2.5	GST	7
2.6	Project Guarantees	9
2.7	Stage 9 Payment	11
2.8	Stage 8 Payment	11
2.9	Project Term.....	12
2.10	Substantial Commencement of a Stage	12
2.11	Schedule 6	12
2.12	Schedule 7	12
3.	General	15
4.	Consent and Acknowledgement of Guarantor.....	15
5.	Legal costs.....	15
Annexure 1	18
	Staging Plan	18

Kew Residential Services Development Agreement Sixth Deed of Variation

Dated 09/12/2016

Parties

Name	Secretary to the Department of Economic Development, Jobs, Transport and Resources, acting pursuant to a Nomination Order issued in respect of the Project on 30 August 2005 by the Governor in Council on the recommendation of the Premier, for and behalf of the Crown in right of the State of Victoria
------	--

Address	121 Exhibition Street, Melbourne, Vic 3000
---------	--

Short name	State
------------	--------------

Name	Kew Development Corporation Pty Ltd ACN 119 766 264
------	--

Address	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000
---------	--

Short name	Developer
------------	------------------

Name	Walker Group Holdings Pty Ltd ACN 001 215 069
------	--

Address	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000
---------	--

Short name	Guarantor
------------	------------------

Background

- A. This Deed is supplemental to an agreement titled 'Kew Residential Services Development Agreement' entered into between the State, the Developer and the Guarantor dated 27 October 2006 (**Principal Agreement**) as varied by:
- A.1 Deed of Variation between the State, the Developer and the Guarantor dated 28 August 2009;
 - A.2 Deed of Release between the State, the Developer and the Guarantor dated 28 August 2009;
 - A.3 Second Deed of Variation between the State, the Developer and the Guarantor dated 13 June 2012;
 - A.4 Third Deed of Variation between the State, the Developer and the Guarantor dated 8 April 2013;

- A.5 Fourth Deed of Variation between the State, the Developer and the Guarantor dated 18 June 2014; and
 - A.6 Fifth Deed of Variation between the State, the Developer and the Guarantor dated 30 March, 2016.
- B. The State, the Developer and the Guarantor have agreed to further vary the Principal Agreement on the terms and conditions set out in this Deed.

The Parties Agree

1. Definitions and interpretation

- 1.1 Capitalised terms which are used but not expressly defined in this Deed have the meanings given in the Principal Agreement.
- 1.2 The provisions of clauses A1.2 (Construction), A1.11 (Delegation), A4.2 (Interpretation of Agreement), A7.1 (Representations and Warranties), A7.3 (Reliance on Representations and Warranties), A25 (Disputes), A26 (GST), A28 (Confidentiality and Publicity), A29 (Communications) and A30 (Miscellaneous) of the Principal Agreement form part of this Deed as if set out at length in this Deed.

2. Variation of Principal Agreement

With effect from the date of this Deed, the Principal Agreement is varied as follows:

2.1 New Definitions

The following new definitions are inserted into the Principal Agreement:

- (a) **'Sixth Deed of Variation'** means the document titled 'Sixth Deed of Variation' between the State, the Developer and the Guarantor.
- (b) **'Stage 9'** means the low scale residential development area of approximately 600m² adjacent to the State's proposed State Retained Areas development (as described in clause C15) and known as Stage 9.
- (c) **'Heritage Building Conservation Works'** means the works to be undertaken pursuant to Heritage Permit P19519 granted by Heritage Victoria on 19 March, 2015 and amended on 19 March, 2016 or as otherwise directed by Heritage Victoria.

2.2 Amended Definitions

The following definitions in the Principal Agreement are amended as follows:

- (a) The definition of 'Revised Developer Payment Date' is amended as follows:
'Revised Developer Payment Date' means 9 December 2016.
- (b) The definition of 'Project Guarantee' is amended as follows:
'Project Guarantee' means the Bank Guarantees or performance or other bonds for the amounts specified in Schedule 7 and includes the New Project Guarantee, Heritage Guarantee, Initial Stage 2 Community Houses Payment Guarantee,

Balance Payment Guarantee, Additional Interest Payment Guarantee, Retention Guarantee, GST Payment Guarantee and Heritage Building Works Conservation Allowance Guarantee.

2.3 Payment of Stage 2 Community Houses Payment and Heritage Building Repayment

A new clause D1.4 is inserted as follows:

Payment of Stage 2 Community Houses Payment and Heritage Building Repayment

- (a) The Developer must pay to the State the Stage 2 Community Houses Payment and the Heritage Building Repayment on the Revised Developer Payment Date.
- (b) The Developer agrees that interest will continue to accrue at the Developer Interest Rate on the Stage 2 Community Houses Payment and the Heritage Building Repayment in accordance with the Fourth Deed of Variation and Fifth Deed of Variation up to and including the date that the Stage 2 Community Houses Payment and the Heritage Building Repayment is paid in full.
- (c) The Developer and the State agree that:
 - (i) the Stage 2 Community Houses Payment at the Revised Developer Payment Date is \$5,798,272 inclusive of interest;
 - (ii) the Heritage Building Repayment at the Revised Developer Payment Date is \$2,115,051 inclusive of interest; and
 - (iii) in accordance with clause A26.8(b), the Developer will pay the State an amount of \$5,550,000 on the Revised Developer Payment Date in full payment of the Stage 2 Community Houses Payment and the Heritage Building Repayment, with the balance being retained by the Developer as payment of the GST Reservation Amount.'

2.4 Maintenance of Heritage Buildings

2.4.1 Clause B15 is deleted and replaced with the following clause:

'B15 Heritage Buildings

- B15.1 The State and the Developer agree that the Development Budget includes an allowance of \$5,000,000 (plus GST) for the design, site preparation and building costs associated with the repair and construction of associated facilities in the Heritage Buildings (**Heritage Building Allowance**).
- B15.2 The Heritage Building Allowance includes an amount of \$3,000,000 allocated to the cost of completing the Heritage Building Conservation Works (**Heritage Building Conservation Works Allowance**).
- B15.3 Prior to the Revised Developer Payment Date, the Developer must engage an independent auditor (to be approved by the State) to verify the expenditure which has been incurred by the Developer in relation to the Heritage Buildings (including expenditure incurred in maintaining the Heritage Buildings in accordance with clause B15.8 but excluding any amount expended on the Heritage Building Conservation Works)

(**Expended Amount**) and must provide a copy of the auditor's report to the State as soon as practicable after the audit report is received and in any event by no later than the Revised Developer Payment Date. The cost incurred in obtaining the audit report will form part of Project Expenditure.

- B15.4 On the Revised Developer Payment Date, the Developer must pay to the State an amount calculated by deducting the Expended Amount from the amount of \$2,000,000 (being the balance of the Heritage Building Allowance after deduction of the Heritage Building Conservation Works Allowance (**Heritage Building Repayment**)) together with interest in accordance with clause B15.5. On payment of the Heritage Building Repayment together with interest in accordance with clause B15.5, the State releases the Developer from any future obligations in relation to the Heritage Core except for the Heritage Building Conservation Works which remain the responsibility of the Developer in accordance with clause B15.10.
- B15.5 Interest shall accrue on the unexpended portion of the Heritage Building Allowance from 1 July 2014 until payment of the Heritage Building Repayment. Interest will be calculated on the daily balance of the unexpended portion of the Heritage Building Allowance at the Developer Interest Rate. For the avoidance of doubt, interest will not accrue on the Heritage Building Conservation Works Allowance.
- B15.6 The State and the Developer must agree on that part of the Site which constitutes the Heritage Core and in the event the parties are unable to agree, the dispute will be determined in accordance with clause A25. For the purposes of this clause, 'Heritage Core' comprises the Heritage Buildings and all other surrounding land which Heritage Victoria requires to be retained or maintained in conjunction with the use or development of the Heritage Buildings.
- B15.7 For the avoidance of doubt, the land comprising the Heritage Core and each certificate of title relating to the land comprised in the Heritage Core is to be issued to and held by the State absolutely and may be dealt with by the State in its absolute discretion.
- B15.8 The Developer must maintain the Heritage Buildings up until the earlier of the completion of the sale by the State of the Heritage Buildings or the Revised Developer Payment Date including carrying out all repair and maintenance reasonably required to ensure that the Heritage Buildings are maintained in their current state of repair. The Developer must seek written approval from the State prior to expending any further funds from the Heritage Building Allowance in relation to the Heritage Buildings. The State must not unreasonably withhold approval to any expenditure reasonably required to ensure that the Heritage Buildings are maintained in their current state of repair.
- B15.9 Notwithstanding clause B15.8, the State is responsible for and bears the risk of:

- (a) compliance with the terms of the Heritage Permit and the Heritage Guarantee Conditions but excluding the Heritage Building Conservation Works which remain the responsibility of the Developer under clause B15.10;
- (b) dealing with and satisfying the Planning Authority in respect of any reduction in the provision of public open space which results or may result:
 - (i) from an alternative re-development of the Heritage Core to that which is currently specified in the Development Plan including any additional area required under clause B15.6 (which must not include any area within the Project Office Precinct which the Developer may develop in accordance with clause C14); or
 - (ii) from the construction of the Car Park.

B15.10 The Developer remains responsible for and bears the risk of the Heritage Building Conservation Works and must undertake and pay for the Heritage Building Conservation Works from the Heritage Building Conservation Works Allowance.

B15.11 At any time prior to completion of the Heritage Building Conservation Works, the Developer may serve a notice on the State requesting that the State agree to a reduction in the amount of the Heritage Building Works Conservation Allowance Guarantee to reflect the value of the Heritage Building Conservation Works undertaken by the Developer (**Guarantee Reduction Notice**). A Guarantee Reduction Notice must:

- (a) include details of the Heritage Building Conservation Works undertaken and completed by the Developer and the cost incurred in completing those works;
- (b) confirm the proportion of the Heritage Building Conservation Works undertaken as a percentage of the total work required to complete the Heritage Building Conservation Works;
- (c) include a certificate from an independent auditor (to be approved by the State) verifying the details provided by the Developer in accordance with paragraphs (a) and (b) and confirming the estimated cost required to complete the Heritage Building Conservation Works; and
- (d) confirming the amount by which the Developer requests the amount of the Heritage Building Conservation Works Allowance Guarantee be reduced (**Reduced Heritage Building Works Guarantee Amount**). Any reduction must:
 - (i) be for a reduction in increments of \$500,000;

- (ii) be for an amount no more than the cost incurred in completing the Heritage Building Conservation Works at the date of the Guarantee Reduction Notice; and
 - (iii) not reduce the amount of the Heritage Building Works Allowance Guarantee to an amount less than the amount certified by the independent auditor as the estimated cost required to complete the Heritage Building Conservation Works.
- B15.12 On receipt of a Guarantee Reduction Notice complying with clause B15.11, the State will return the Heritage Building Works Allowance Guarantee to the Developer on receipt of a replacement Heritage Building Works Allowance Guarantee from the Developer for the Reduced Heritage Building Works Guarantee Amount.
- B15.13 When the Developer has completed the Heritage Building Conservation Works, the Developer must:
 - (a) notify the State in writing that the Heritage Building Conservation Works have been completed and provide the State with confirmation in writing that Heritage Victoria agrees that the Heritage Building Conservation Works are complete; and
 - (b) engage an independent auditor (to be approved by the State) to verify the expenditure which has been incurred by the Developer in relation to the Heritage Building Conservation Works (**Heritage Building Conservation Works Expended Amount**) and must provide a copy of the auditor's report to the State as soon as practicable after the audit report is received and in any event by no later than 21 days after the Heritage Building Conservation Works have been completed. The cost incurred in obtaining the audit report will form part of Project Expenditure.
- B15.14 If the Heritage Building Conservation Works Expended Amount as verified by the independent audit is:
 - (a) less than the Heritage Building Conservation Works Allowance, the Developer must pay to the State within 14 days after delivery of the independent audit to the State in accordance with clause B15.13(b) the difference between the Heritage Building Conservation Works Allowance and the Heritage Building Conservation Works Expended Amount;
 - (b) more than the Heritage Building Conservation Works Allowance, the State must pay to the Developer the difference between the Heritage Building Conservation Works Allowance and the Heritage Building Conservation Works Expended Amount within 14 days after receipt of a tax invoice from the Developer for that amount.

- B15.15 Notwithstanding any other provision of this Agreement, if the Developer fails to pay the difference between the Heritage Building Conservation Works Allowance and the Heritage Building Conservation Works Expended Amount in accordance with clause B15.14(a):
- (a) the State is not required to issue a Default Event Notice with respect to that default in accordance with clause A20;
 - (b) the Developer does not have an Applicable Cure Period with respect to that default in accordance with clause A20; and
 - (b) the State is not required to provide notice to the Developer of its intention to deduct amounts from the Project Guarantee in accordance with clause A23.3(d) before doing so.
- B15.16 Without limiting the provisions of clause A14, the Developer agrees that all materials and documents created by or on behalf of the Developer or the Guarantor in relation to the Heritage Buildings and the Community Facilities (as defined in the Development Agreement prior to the Fourth Deed of Variation) constitute Materials and/or Pre-Existing Matter to which the provisions of clause A14 apply.
- B15.17 For the purposes of this clause B15, 'Heritage Permit', 'Heritage Guarantee' and 'Heritage Guarantee Conditions' have the same meaning as in clause A23.12.'

2.5 GST

A new clause A26.8 is inserted as follows:

A26.8 GST Interim Provisions

- (a) The State has undertaken steps to obtain a GST Valuation Refund in accordance with clause A26.5 and a Government GST Margin Scheme Refund in accordance with clause A26.6, and the State has advised the Developer that the State has not yet obtained any final and binding determination from the Commonwealth that the State is entitled to a GST Valuation Refund or a GST Margin Scheme Refund..
- (b) The Developer acknowledges that it has received the amount of \$2,363,323 from the State as a pre-payment of part of the amount of the GST Valuation Refund and the Government GST Margin Scheme Refund to which the Developer may be entitled (**GST Reservation Amount**) if the pre-conditions to payment of the GST Valuation Refund under clause A26.5 and the Government GST Margin Scheme Refund under clause A26.6 are satisfied. The Developer acknowledges and agrees that the GST Reservation Amount was received by the Developer in accordance with clause D1.4 (c) by way of a set off against the amount of the Stage 2 Community Houses Payment and the Heritage Building Repayment otherwise payable by the Developer to the State on the Revised Developer Payment Date.

- (c) The Developer agrees that interest will accrue at the Developer Interest Rate on the GST Reservation Amount from 1 December 2016 until the Determination Date.
- (d) The Developer acknowledges and agrees that:
- (i) the State has paid the GST Reservation Amount in good faith in anticipation that a GST Valuation Refund and/or a Government GST Margin Scheme Refund may be payable by the State to the Developer at some future date. If a GST Valuation Refund and/or a Government GST Margin Scheme Refund is payable by the State to the Developer at a future date, the amount of the GST Valuation Refund and/or Government GST Margin Scheme Refund payable by the State will be reduced by the amount of the GST Reservation Amount together with accrued interest;
 - (ii) the Developer has no present entitlement to receive a GST Valuation Refund and/or a Government GST Margin Scheme Refund from the State prior to the Determination Date, and the Developer will not bring any claim against the State on any basis whatsoever claiming an entitlement to be paid a GST Valuation Refund and/or a Government GST Margin Scheme Refund prior to the Determination Date;
 - (iii) the Developer will not seek to claim a set off or refuse any liability to pay the State any monies payable by the Developer to the State under this Agreement on the basis that the Developer has not been paid a GST Valuation Refund and/or a Government GST Margin Scheme Refund at any time prior to the Determination Date; and
 - (iv) if a GST Valuation Refund and/or a Government GST Margin Scheme Refund is not payable to the Developer, the Developer must repay to the State within 14 days after the Determination Date, the GST Reservation Amount together with interest accrued on the GST Reservation Amount in accordance with clause A26.8(c).
- (e) The State agrees that it will:
- (i) keep the Developer updated on the progress of the applications by the State contemplated by clauses A26.5 and A26.6 (**Applications**) for a refund from the Commonwealth of the overpayment of GST;
 - (ii) provide the Developer with copies of any or all correspondence between the State and the Commonwealth in relation to the Applications on or before the date of the Sixth Deed of Variation; and
 - (iii) provide the Developer with copies of any or all correspondence between the State and the Commonwealth in relation to the Applications after the date of the Sixth Deed of Variation.
- (f) The Developer agrees that any information received from the State relating to the Applications is confidential and sensitive commercial information and must be kept confidential in accordance with the requirements of clause A28.
- (g) The Developer agrees that:

- (i) if the Applications are rejected by the Commonwealth; or
- (ii) the State considers that there is no reasonable prospect of success for the Applications,

the State may in its absolute discretion cease any further action in relation to the Applications. The State will provide the Developer notice in writing if the State elects to cease any further action in relation to the Applications and provide a copy of the applicable notice from the Commonwealth (**Cease Notice**). Following service of a Cease Notice, the State will have no further obligations in relation to the Applications, and the Developer will have no rights or claim against the State in relation to the GST Valuation Refund or the Government GST Margin Scheme Refund.

- (h) Notwithstanding any other provision of this Agreement, if the Developer fails to repay the GST Reservation Amount together with interest in accordance with clause A26.8(d)(iv):
 - (i) the State is not required to issue a Default Event Notice with respect to that default in accordance with clause A20;
 - (ii) the Developer does not have an Applicable Cure Period with respect to that default in accordance with clause A20; and
 - (iii) the State is not required to provide notice to the Developer of its intention to deduct amounts from the Project Guarantee in accordance with clause A23.3(d) before doing so.
- (i) In this clause A26.8:

Determination Date means the earlier of:

 - (i) the date the State provides the Developer with the Commonwealth's final and binding determinations of the Applications; and
 - (ii) the date the State serves a Cease Notice in accordance with clause A26.8(f).

2.6 Project Guarantees

2.6.1 Clause A23.1 is amended to read as follows:

- (a) The Developer must provide each Project Guarantee on the date specified in Schedule 7.
- (b) The Developer must deliver to the State the Heritage Building Works Conservation Allowance Guarantee, the GST Payment Guarantee and the Retention Guarantee on the Revised Developer Payment Date.
- (c) On receipt of the:
 - (i) Stage 2 Community Houses Payment and the Heritage Building Repayment together with interest in accordance with clause A23.1(b); and

- (ii) the Heritage Building Works Conservation Allowance Guarantee, the GST Payment Guarantee and the Retention Guarantee,

the State will deliver to the Developer the New Project Guarantee, the Heritage Guarantee, the Initial Stage 2 Community Houses Payment Guarantee, the Balance Payment Guarantee and the Additional Interest Payment Guarantee.

- (d) Without limiting any provision of clause A23.5, the Developer acknowledges and agrees that if the Developer fails to pay the Heritage Building Repayment and the Stage 2 Community Houses Payment (together with interest accrued thereon) on the Revised Developer Payment Date, or fails to deliver the Heritage Building Works Conservation Guarantee, the GST Payment Guarantee and the Retention Guarantee on the Revised Developer Payment Date, then:

- (i) The State is not required to deliver to the Developer the New Project Guarantee, the Heritage Guarantee, the Initial Stage 2 Community Houses Payment Guarantee, the Balance Payment Guarantee or the Additional Interest Payment Guarantee;

- (ii) The State may immediately and without notice to the Developer make demand or receive payment under the Project Guarantee;

- (iii) The Developer must not take any steps or exercise any legal or equitable Rights available to it to injunct or otherwise restrain:

- (A) any issuer of the Project Guarantee provided under clause A23 from paying the State pursuant to the Project Guarantee;

- (B) the State from taking any steps for the purpose of making demand under the Project Guarantee, or receiving payment under the Project Guarantee; or

- (C) the State using the money received under the Project Guarantee.

- (e) The Developer acknowledges that damages may not be an adequate remedy for any breach by the Developer of, or failure by the Developer to, comply with clause 2.4.1. The Developer agrees that without limiting any other right, remedy or action open to the State in connection with any actual or threatened breach or failure to comply with clause A23.1, the State is entitled to seek equitable relief (including specific performance or injunctive or declaratory relief) to restrain any actual or threatened breach or failure to comply.'

2.6.2 Clause A23.7(b) to (d) (inclusive) is deleted and replaced with the following clause:

- '(b) The State and the Developer agree that if the Heritage Guarantee is unable to be located by Heritage Victoria, the Developer will accept a letter from Heritage Victoria (on terms and conditions acceptable to the issuer of the Heritage Guarantee) confirming that the Heritage Guarantee is no longer required and that the issuer of the Heritage Guarantee has no further liability to Heritage Victoria under the Heritage Guarantee, in full satisfaction of the requirement of the State to return the Heritage Guarantee to the Developer in accordance with this Agreement.'

2.6.3 A new clause A23.10 is inserted as follows:

'A23.10 GST Payment Guarantee

On the date specified in Schedule 7, the Developer must deliver to the State the GST Payment Guarantee.'

2.6.4 A new clause A23.11 is inserted as follows:

'A23.11 Heritage Building Works Conservation Allowance Guarantee

On the date specified in Schedule 7, the Developer must deliver to the State the Heritage Building Works Conservation Allowance Guarantee.'

2.6.5 The existing clauses A23.10 and A23.11 are renumbered as clauses A23.12 and A23.13 respectively.

2.6.6 The renumbered clause A23.12 (previously clause A23.10) is amended by inserting the following new definitions:

'GST Payment Guarantee means the Project Guarantee for \$2,525,000 to be provided by the Developer in accordance with clause A23.10.

Heritage Building Works Conservation Allowance Guarantee means the Project Guarantee for \$3,000,000 to be provided by the Developer in accordance with clause A23.11.'

2.7 Stage 9 Payment

A new clause D1.5 is inserted as follows:

'D1.5 Stage 9 Payment

- (a) The Developer agrees that notwithstanding any other provision of Schedule 12, that the State will be paid an amount of at least \$150,000 from the sale of each Sale Lot which is developed by the Developer in Stage 9 (**'Stage 9 Minimum Amount'**).
- (b) If the Sale price of any Lot (inclusive of GST) in Stage 9 exceeds \$1,500,000, the State will be paid an amount in addition to the amount specified in clause D1.5(a) equal to the difference between:
 - (i) 10% of the Sale price of that Lot (inclusive of GST); and
 - (ii) the amount payable pursuant to clause D1.5(a),

but only when that amount is a positive amount.

2.8 Stage 8 Payment

A new clause D1.6 is inserted as follows:

'D1.6 Stage 8 Payment

The Developer agrees that notwithstanding any other provision of Schedule 12, the State will be paid an amount of 10% of the Sale price for each Lot (inclusive of GST) from the sale of each Sale Lot which is developed by the Developer in Stage 8.'



<p>\$5,000,000 (Existing Project Guarantee)</p>	<p>On or before Operative Date</p>	<p>On delivery of the New Project Guarantee and the Heritage Guarantee in accordance with Clause A23.7 [Note: this Existing Project Guarantee has been released]</p>
<p>\$4,200,000 (New Project Guarantee)</p>	<p>On the date referred to in clause A23.7 [Note: the State is holding the New Project Guarantee]</p>	<p>On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation, the Fifth Deed of Variation and the Sixth Deed of Variation) have been paid in full by the Developer and the Developer has provided to the State the Heritage Building Works Conservation Allowance Guarantee in accordance with clause A23.11, the GST Payment Guarantee in accordance with clause A23.10 and the Retention Guarantee, (if required) in accordance with clause A23.9.</p>
<p>\$800,000 (Heritage Guarantee)</p>	<p>On the date referred to in clause A23.7 [Note: Heritage Victoria is holding the Heritage Guarantee]</p>	<p>On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation, the Fifth Deed of Variation and the Sixth Deed of Variation) have been paid in full by the Developer and the Developer has provided to the State the Heritage Building Works Conservation Allowance Guarantee in accordance with clause A23.11, the GST Payment Guarantee in accordance with clause A23.10, and the Retention Guarantee (if required) in accordance with clause A23.9.</p>
<p>\$2,425,000 (Initial Stage 2 Community Houses Payment Guarantee)</p>	<p>On the date the last party executes the Third Deed of Variation [Note: the State is holding the Initial Stage 2 Community Houses Payment Guarantee]</p>	<p>On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation, the Fifth Deed of Variation and the Sixth Deed of Variation) have been paid in full by the Developer and the Developer has provided to the State the Heritage Building Works Conservation Allowance Guarantee in accordance with clause A23.11, the GST Payment Guarantee in accordance with clause A23.10, and the Retention Guarantee (if required) in accordance with clause</p>

		A23.9.
\$1,700,000 (Balance Payment Guarantee)	On the date the last party executes the Fourth Deed of Variation. [Note: the State is holding the Balance Payment Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation, the Fifth Deed of Variation and the Sixth Deed of Variation) have been paid in full by the Developer and the Developer has provided to the State the Heritage Building Works Conservation Allowance Guarantee in accordance with clause A23.11, the GST Payment Guarantee in accordance with clause A23.10, and the Retention Guarantee (if required) in accordance with clause A23.9.
\$1,400,000 (Additional Interest Payment Guarantee)	On the date that the last party executes the Fifth Deed of Variation. [Note: the State is holding the Additional Interest Payment Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation, the Fifth Deed of Variation and the Sixth Deed of Variation) have been paid in full by the Developer and the Developer has provided to the State the Heritage Building Works Conservation Allowance Guarantee in accordance with clause A23.11, the GST Payment Guarantee in accordance with clause A23.10, and the Retention Guarantee (if required) in accordance with clause A23.9.
\$3,000,000 (Heritage Building Works Conservation Allowance Guarantee)	On the Revised Developer Payment Date	Subject to clause B15.12, on the date that the Developer pays the State the difference between the Heritage Building Conservation Works Allowance and the Heritage Building Conservation Works Expended Amount in accordance with clause B15.14(a), or the date the State pays the Developer the difference between the Heritage Building Conservation Works Allowance and the Heritage Building Conservation Works Expended Amount in accordance with clause B15.14(b) (as applicable).
\$2,525,000 (GST Payment Guarantee)	On the Revised Developer Payment Date	On the date the State pays the Developer the GST Valuation Refund and the GST Margin Scheme Refund in accordance with clauses A26.5 and A26.6, or the date the Developer repays to the State the GST Reservation Amount together with

		interest in accordance with clause A26.
\$1,000,000 (Retention Guarantee)	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation, the Fifth Deed of Variation and the Sixth Deed of Variation) have been paid in full by the Developer.	5 Business Days after the End Date.

3. General

The parties acknowledge and agree that:

- 3.1 the provisions of the Principal Agreement (as expressly varied by this Deed) continue in full force and effect;
- 3.2 the provisions of the Principal Agreement shall be read and construed so as to give effect to the provisions of this Deed, and in the event of conflict or inconsistency the latter shall prevail; and
- 3.3 except where specified in this Deed, each of the obligations of the State and the Developer are separate and independent and for the avoidance of doubt, the Developer's obligation to pay the Stage 2 Community Houses Payment, the Liquidated Damages Amount and the Heritage Buildings Repayment are not subject to any pre-conditions unless expressly specified in this Deed.

4. Consent and Acknowledgement of Guarantor

- 4.1 The Guarantor acknowledges and consents to the provisions of this Deed and the variation of the Principal Agreement made by this Deed.
- 4.2 The Guarantor acknowledges that the guarantee in Part E of the Principal Agreement continues in full force and effect following execution of this Deed and extends and applies to the Developer's obligations under this Deed.

5. Legal costs

- 5.1 Except as otherwise expressly provided in this Deed or the Development Agreement, each party shall pay their own legal costs in relation to the preparation, negotiation and execution of this Agreement.
- 5.2 The Developer must pay or reimburse the State 50% of the legal costs incurred by the State in the drafting of this Agreement (**Legal Costs Reimbursement**).



- 5.3 The State will provide the Developer with a tax invoice for the Legal Costs Reimbursement (which will include all information reasonably necessary to verify the total legal costs incurred and the amount of the Legal Costs Reimbursement) (**Tax Invoice**). The Developer must pay the Legal Costs Reimbursement to the State within 10 Business Days following receipt by the Developer of the Tax Invoice.

Signing Page

Executed by the parties

SIGNED by: Tim Bamford, Executive Director, Major Projects Victoria in his capacity as authorised delegate of the Secretary to the Department of Economic Development, Jobs, Transport and Resources for and on behalf of the Crown in right of the State of Victoria in the presence of:


)
)
)
)
)




.....
Signature of Witness

Executed by **Kew Development Corporation Pty Ltd ACN 119 766 264** in accordance with section 127 of the Corporations Law in the presence of:


)
)



.....
Signature of Director
DAVID RYAN
.....
Print full name


.....
Signature of Director (or Company Secretary)
IAN GRIST
.....
Print full name

Executed by **Walker Group Holdings Pty Ltd ACN 001 215 069** in accordance with section 127 of the Corporations Law in the presence of:

)
)


.....
Signature of Director
DAVID RYAN
.....
Print full name


.....
Signature of Director (or Company Secretary)
IAN GRIST
.....
Print full name



Annexure 1

Staging Plan

1. TO PROVIDE A PLAN OF THE PROPOSED DEVELOPMENT AND TO SHOW THE LOCATION OF THE PROPOSED DEVELOPMENT WITHIN THE LOCALITY OF THE SITE.
 2. TO SHOW THE PROPOSED LOTS AND THE PROPOSED STAGES OF DEVELOPMENT.
 3. TO SHOW THE PROPOSED STAGES OF DEVELOPMENT AND THE PROPOSED LOTS.
 4. TO SHOW THE PROPOSED STAGES OF DEVELOPMENT AND THE PROPOSED LOTS.
 5. TO SHOW THE PROPOSED STAGES OF DEVELOPMENT AND THE PROPOSED LOTS.

Scale: 1:1000
 Date: 15/12/16
 Drawn: [Name]
 Checked: [Name]



WILLMERE ESTATE

